
(2014) 12 PAT CK 0050
In the Patna High Court
Case No : Cr. Misc. No. 42521 of 2011

Taresh Rai and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(3), 193, 209, 227, 319
Penal Code, 1860 (IPC) — Section 302, 307, 323, 324, 337

Citation : (2015) 1 PLJR 413

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Harsh Singh, Advocates for the Appellant; S.K. Giri, Advocates for the Respondent

Judgement

Akhilesh Chandra, J.—The three petitioners above named being aggrieved by order dated 25th May, 2011, passed in Garkha P.S. Case No. 78 of 2005 by learned Chief Judicial Magistrate, Chapra, subsequent to order dated 30th April, 2010, passed by this Court in Cr. Misc. No. 7298/2008, have preferred the present application, seeking quashing of the order Impugned, apart from others on the ground that it is not, in consonance with the earlier directions of this Court. The relevant facts in short is that at the instance of opposite party No. 2 (the informant) altogether twelve persons including the three petitioners were named accused in Garkha Police Station Case No. 78/2005 for the offences under Sections 302, 307, 341, 323, 324, 337/34 of the Indian Penal Code, as early as on 15th August, 2005, roughly a week thereafter apprehending some wrong the informant opposite party No. 2 filed protest petition on 22nd August, 2005.

2. The Investigating Officer has submitted its report in four phases, 1st report by way of charge-sheet, keeping the investigation pending against seven out of twelve, only against five named accused persons whereon cognizance was taken and vide order dated 30th November, 2005, processes were issued against said five accused persons.

3. A few months thereafter, in similar fashion, police report by way of charge-sheet against three accused persons was submitted. After completing the processes required at the relevant time the case was committed to the Court of Session but with regard to eight accused persons only against whom charge-sheets in two terms were submitted by Police, for trial on 8th February, 2007..

4. Roughly four months thereafter, again keeping the investigation pending against three (the petitioners) police submitted 3rd charge-sheet against one whose case was also committed to the Court of session for trial.

5. Finally after submitting three charge-sheets against altogether nine, out of twelve named accused persons, Investigating Officer submitted his last report exonerating the remaining three i.e. the petitioners and the court below apart from others on the ground that no protest petition is filed by the informant (though, as stated it had earlier been filed on 22nd August, 2005), accepted the report, giving room to informant opposite party No. 2 to challenge the order by filing Cr. Misc. No. 7298/2008, wherein the three petitioners here also appeared and contested, but, finally for the reasons mentioned, the application was allowed on 30th April, 2010. Order under challenge there was set aside and, the court concerned was directed to take necessary steps in accordance with law at the earliest.

6. It is undisputed that the petitioners here after getting the order of their exoneration by the court below set aside, were perhaps satisfied but at the same time decided not to appear before the courts concerned, who ultimately by order impugned at the instance of the informant after perusing the records of pending Sessions Trial arising out of same case, issued required processes ensuring appearance of the petitioners for further needful. The petitioners initially sought privilege under Section 438 of the Code of Criminal Procedure, which was turned down, but, ultimately they got the privilege vide order dated 13th December, 2011, passed in Cr. Misc. No. 41937/2011. On appearance before the court below petitioners were supplied with the police papers and sent up for trial before the Sessions Court bearing S. Tr. No. 22/2012, where initially they sought their discharge by filing petition under Section 227 Cr.P.C., but subsequently did not press but permitted the charges being framed, meanwhile, this application was filed on 12th December, 2011.

7. Originally, in the instant case informant was not made party, and as appears the petitioners by placing Bench slip initially on 13th February, 2012, unsuccessfully tried to get the matter placed for urgent hearing by a Bench, but it was not accepted. However, subsequently referring a decision of Apex Court reported in Jile Singh Vs. State of U.P. and Another, , second Bench slip was placed on 1st October, 2012, whereon ultimately matter appears listed before a Bench and vide order dated 15th October, 2012, petitioners were permitted to implead informant and matter was ordered to be listed on priority basis on appearance of informant-opposite party No. 2.

8. Here, it would again be relevant to mention that by the time second bench slip was placed one Interlocutory Application No. 1713/2012 had already been filed but only to be kept in the Office which could not be attached with the record till 16th September, 2014. Prior to this, even it appears at no point of time filing of such Interlocutory Application was brought into notice of the Benches who were in seisin of the matter from time to time. And ultimately, pursuant to order dated 20th March, 2014 on the ground of earlier order being passed, with concurrence of Hon"ble the Chief Justice, just before the matter being placed before this Bench. Now, it is to be explained within a fortnight by the Registry as to how and under what circumstances the above-said Interlocutory Application could not be attached with record depriving the Bench from taking notice of the same for about two years.

9. While assailing the order, it is contended by learned counsel for the petitioners that the court below did not appreciate earlier order of this Court and while committing the case to the Court of Sessions at the very initial stage become functus in officio and it was not open for him to further take cognizance and commit the case again and again to the Court of Session, rather, it was the Sessions Court which was to examine the matter in view of Section 193 of the Code of Criminal Procedure. Reliance was placed on the decision in the cases of Hira Lal and Others Vs. State of Rajasthan and Others, ; Jile Singh Vs. State of U.P. and Another, and Dharam Pal and Others Vs. State of Haryana and Another, .

10. On the other hand, learned counsel representing opposite party No. 2 and Additional Public Prosecutor for the State both contended that the court below has properly appreciated and complied the directions of this Court given earlier. At no point of time formal order of cognizance was taken, but, since the petitioners avoided appearance after securing their appearance and serving copy of police papers etc. as required under law, send the matter in due course before the competent court who in turn exercise his jurisdiction and decided to proceed against the petitioners for trial. Hence, now, there is nothing to be interfered with the order impugned.

11. It is undisputed position that in the Code of Criminal Procedure, 1898, vital changes took place and new Code was made applicable in the year 1974. The controversy arose as to powers of committing court as well Court of Session with respect to application of Section 193 of the Code and taking different provisions and decisions including decision of Apex Court in Raghubans Dubey Vs. State of Bihar, ; in para-6, Full Bench of this Court in a matter of Sk. Latfur Rahman and Others Vs. The State, has held that--

"-----that a Magistrate trying a warrant case as also a Court of Session having once validly taken cognizance of the offence on the basis of police report (when considering material before it for framing a charge) is not only entitled but, indeed, duty bound to summon a person as an accused to stand trial before it if it is fully satisfied of the existence of a prima facie case against an additional accused who may not have been sent up as such-----."

And finally in para-11 has also come to the conclusion:--

"---Therefore, what the law under Section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well.-----Once the case has been committed, the bar of Section 193 is removed or, to put it in other words, the condition therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon any individual accused of the crime."

The above decision of the Full Bench has also been affirmed by Apex Court in a case of Kishun Singh and Others Vs. State of Bihar, .

12. But later on, the above decision was doubted in subsequent decisions of the Apex Court including the case of Ranjit Singh Vs. State of Punjab, and ultimately noticing the contentious issue and its impact the Apex Court in the case of Dharam Pal v. State of Haryana, referred the matter before larger Bench as reported in Dharam Pal and Another Vs. State of Haryana and Another, , which finally have been decided by a Bench constituting five Hon"ble Judges as reported in Dharam Pal and Others Vs. State of Haryana and Another, . Wherein as appears from paragraph-3, the following six questions were before consideration of the court which reads as such:--

"i. Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

ii. If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, alongwith Nafe Singh, to stand trial in connection with the case made out in the police report?

iii. Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

iv. Can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction?

v. Upon the case being committed to the Court of Session, could the Session Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was -reached in order to take recourse thereto?

vi. Was Ranjit Singh's case (supra), which set aside the decision in Kishun Singh's case (supra), rightly decided or not?"

And while replying in paragraph Nos. 24 and 25 it is held as such:--

"24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. in the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

25. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session, if the same was found to be triable by the Session Court."

And in paragraph No. 26 it is held as such:--

"26. Questions 4, 5 and 6 are more or less inter-linked. The answer to question 4 must be in the affirmative, namely, that the Session Judge was entitled to issue summons under Section 193 Cr.P.C. upon the case being committed to him by the learned Magistrate. Section 193 of the Code speaks of cognizance of offences by Court of Session and provides as follows:--

193. Cognizance of offences by Courts of Session.--Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

And again earlier decision on the point taken and affirmed in the case of Kishun Singh (supra) has been approved.

13. It cannot be left without consideration that for almost 20 years the divergent views taken on the issue by the Apex Court remained operational and the courts acted upon according to the decision which was brought into their notice, but, all the cases referred to in the relevant decisions as is evident from the reported judgments were a bit different than the present case. In other cases, Investigating Officer had once submitted final report wherein on final conclusion of investigation charge-sheet was submitted against a few and some others were not sent up for trial. Whereas in the instant case, as stated at the very initial stage, investigation was kept pending till the three petitioners here were not

found innocent by the Investigating Officer. Meanwhile, in three sets charge-sheets against different named accused persons were submitted, and the court below as per prevailing practice took cognizance and committed the respective cases of the accused to the Court of Session and the Session Court also avoided considering application of Section 193 of the Code, perhaps, they had in their mind the subsequent decision of the Apex Court in the case of Ranjeet Singh (supra), which has now finally been disapproved.

14. In the case in hand, when the police in its last report exonerated the petitioners and it was accepted by the Court in seisin the informant preferred Cr. Misc. No. 7298/2008 which was after hearing the parties disposed of vide order dated 30.4.2010, in 5th paragraph of the orders aforesaid it is observed "normally at the first outcome of the investigation cognizance is taken, entire case could have been committed irrespective of keeping the investigation pending against some of the accused persons named in the first information report", and in the following paragraph (paragraph No. 6) "In view of ongoing trial of some of the accused persons it is also stated that it was open to the petitioners to take shelter of provisions as contemplated under Section 319 of Cr.P.C." and finally in paragraph No. 7 the court below out (sic--ought?) to have left the matter for consideration of the Court of Session at the stage of hearing on the point of charge where trial of other accused persons are going on. And lastly, a direction was given to take necessary steps in accordance with law at the earliest.

15. From the outset, there appears no reason to hold that the court did not appreciate the observations and directions given above, since all such observations were made in the light, what could have been the other possibilities also for the informant and the court below ought to have taken into consideration that since cognizance has already been taken for the offence it was not subsequently open for him to anyhow bifurcate the same accused-wise. It was and it is a right to be exercised by the court competent to try, where initially the case had already been committed. Hence, the Court was not justified by accepting exoneration of the opposite parties there (petitioners here) and nowhere from the order under challenge it appears that court below has taken cognizance second time, rather, he simply, since the petitioners did not appeared in spite of being aware of the matter, issued processes securing their appearance and immediately, as is the admitted position, on their appearance, after serving police papers etc. directed them to appear before the Court of Session, where the case had been/was being committed.

16. True it is, in view of now settled principle of law, at the time of commencement of trial for the first time the trial court ought to have examined and considered the materials and could have summoned remaining four accused persons including the petitioners and again it had an opportunity to summon the petitioners when case of 9th accused was brought before him for trial. But as indicated above, perhaps due to divergent view nothing could be done. But, at

the same time, due to lapse of time and finding that the trial of remaining accused persons in the original case, either have been concluded or about to arrive at the stage from where it would be highly unjustified to take a U-turn just to summon three more accused persons i.e. the petitioners if either during investigation or during trial there was any material against them. In fact, it was open to the petitioners in the present scenario and stage of the case to point out the materials collected during investigation, if not valid, and seek their discharge from the court where finally they were directed to appear after complying the provisions under Section 209 of the Cr.P.C. and serving police papers etc. which as stated above, petitioners initially opted, but at the same time, for the reasons best known to them, did not choose to pursue their prayer seeking discharge and the Sessions Court finding materials against them to proceed against and decided to frame the charges and put them for trial.

17. Undoubtedly, in the cases which are at the initial stage or where the law of the land, now made clear on the point, may effectively be applied, the Courts in seisin are bound to strictly follow, but, at the same time, in other cases taking into consideration the stage arrived either in trial or appeal they are to decide what to do in accordance with the law and the stages. But so far as present case is concerned, the Clock cannot move anti. And it is to be accepted that the Session Court on consideration of the materials has taken cognizance and decided to proceed with the trial against the petitioners also, at best it can be said that the trial court must proceed expeditiously and conclude the same at the earliest. Accordingly, ordered.